these already discounted pricing arrangements. Finally, it is BellSouth's position that promotions of 90 days or less should not be made available for resale to competitors, while promotions of longer than 90 days will be available for resale. The parties do not appear to disagree on this point.

ANALYSIS AND FINDINGS:

A) Contract Service Arrangements ("CSAs"). CSAs are, by definition, services provided in lieu of existing tariff offerings and are, in most cases, priced below standard tariffed rates. Requiring BellSouth to offer already discounted CSAs for resale at wholesale prices would create an unfair competitive advantage for AT&T and is rejected. Instead, all BellSouth Contract Service Agreements which are in place as of the effective date of this Order shall be exempt from mandatory resale. However, all CSA's entered into by BellSouth or terminating after the effective date of this Order will be subject to resale, at no discount

B) N11/911 Each ILEC has the duty under the Act to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers (47 U.S.C. §252(d)(4)). 911 service provides the facilities and equipment required to route emergency calls made in a particular geographic area to the appropriate Public Safety Answering Point. E911 provides more flexibility by using a database to route emergency calls. N11 is a service offered to information service providers who, in turn, provide information services to consumers via three digit dialing. In simplest terms, BellSouth asserts that these are not retail services because they are provided to municipalities and information service providers, who in turn provide the 'telecommunications service' to end-users. The Commission would concur with BellSouth's position on this issue, and finds that 911/E911/N11 services are not subject to mandatory resale under the federal Act.

C) Link Up/Lifeline. These are subsidy programs designed to assist low income residential customers by providing a monthly credit on recurring charges and a discount on nonrecurring charges for basic telephone service. Section 251(c)(4)(B) of the federal Act provides that "[a] State Commission may, consistent with regulations prescribed by the [FCC], prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers." The FCC Order, at §VIII(C)(4), specifically lists Lifeline service as a service subject to such resale limitations. BellSouth shall be required to re-sell Link Up/Lifeline services to AT&T, with the restriction that AT&T shall offer only to those subscribers who meet the criteria that BellSouth currently applies to subscribers of these services; AT&T shall discount the Link Up/Lifeline services by at least the same percentage as now provided by BellSouth; and AT&T shall comply with all aspects of any applicable rules, regulations or statutes relative to the providing of Link Up/Lifeline programs.

D) Promotions. The issue of promotional pricing was extensively addressed in the FCC Order, §VIII(C)(2), which specifically provides that short-term promotions, which are those offered for 90 days or less, should not be offered at a discount to resellers. By contrast, promotions which are offered for a term of more than 90 days should be made available for resale. A similar result must issue in this proceeding, with the express restriction that AT&T shall only offer a promotional rate obtained from BellSouth for resale to customers who would qualify for the promotion if they received it directly from BellSouth.

E) Grandfathered Services. The FCC rules specifically provide that when an ILEC makes a service available only to a limited group of customers that have purchased the service in the past, these "grandfathered" services must be made available for resale to the same limited group of customers that have purchased the service in the past. *See* FCC Order, §VIII(C)(5).

ISSUE 2: May BellSouth require AT&T to re-sell its services "as-is," i.e. subject to the terms and conditions contained in Bell's tariff?

AT&T's Position: *All restrictions that limit who can purchase a service or how that service may be used constitute unreasonable and discriminatory conditions under the Act. 47 U.S.C.A. § 251(c)(4). The FCC Order provides that restrictions on resale are presumptively unreasonable. FCC Order No. 96-325 ¶ 939. Competitive markets will drive prices for all classes of services offered to Louisiana consumers to lowest levels possible to benefit both residential and business consumers. If allowed to restrict certain service offerings from the competitive pressures produced by resale, BellSouth will be able to inhibit the emergence of competition in significant portions of BellSouth's current monopoly market. This Commission should allow only narrowly tailored restrictions such as offering withdrawn services to non-grandfathered customers, means tested offerings to meligible subscribers, or residential services to non-residential subscribers. FCC Order No. 96-325 ¶¶ 962, 968.*

BellSouth's Position. *When AT&T or any other competitor purchases BellSouth's retail tariffed services for resale it should be required to take those retail services "as is"; that is, subject to all of the terms and conditions contained in the retail tariff, including any class of service restrictions and any use or user restrictions. Nothing in the Act requires BellSouth to modify or eliminate the terms and conditions of its retail services when they are made available for resale.*

Moreover, AT&T's request that use and user restrictions be eliminated from BellSouth's retail tariffs when they are made available for resale would result in discrimination. AT&T and its customers would not be bound by the terms and conditions of the tariff, but BellSouth and its customers would be bound.

ANALYSIS AND FINDINGS:

AT&T's assertion that "all restrictions that limit who can purchase a service or how that service may be used constitute unreasonable and discriminatory conditions under the Act," is an oversimplification of this issue. As noted by AT&T, the FCC Order, at ¶939, states that restrictions on resale are presumptively unreasonable. The Act only prohibits "unreasonable or discriminatory conditions or limitations" on resale. In its analysis of the Act, the FCC specifically approves numerous resale restrictions, and even discusses, with approval, some requirements that services be resold "as-is" (see, e.g. Order, §§VIII(C)(4) and (5)). The requirement that services be resold "as-is" does not constitute a restriction on resale. Rather, it is a recognition of the simple fact that in reselling a service the reseller takes the service as it finds it. Restated, this is the inherent nature of resale. As BellSouth is, by definition, imposing its own terms and conditions on itself, it is not discriminatory for AT&T to be required to resell services subject to these same terms and conditions. Nor can these restrictions be deemed unreasonable, because all terms and conditions of any tariff are effective only upon receipt of Commission approval. To the extent AT&T purchases services for resale it must do so on an "as-is" basis.

ISSUE 3: Equal Quality of Service

AT&T's Position: *The FCC Order requires that BellSouth provide resold services, interconnection and unbundled network elements at a level of quality at least equal to the highest*

level of quality that BellSouth provides itself, any related entity or other party, including end users. FCC Order No. 96-325 ¶¶ 224, 314, 970; 47 C.F.R. §§ 51.305(a), 51.311(b). New entrants also must have a mechanism for ensuring that BellSouth provides them with this same level of quality. AT&T contends the appropriate mechanism is the use of Direct Measures of Quality ("DMOQs") and submission of monthly management reports by BellSouth to AT&T that measure BellSouth's performance against DMOQs. DMOQs would provide objective standards to determine whether BellSouth is discriminating, intentionally or unintentionally, against new market entrants by providing inferior services.

BellSouth Position: *BellSouth agrees to provide the same quality for services provided to AT&T and other CLECs that it provides to its own customers for comparable services. BellSouth will work with AT&T and other CLECs in the next six months to develop mutually agreeable specific quality measurements concerning ordering, installation and repair items included in this agreement, including but not limited to interconnection facilities, 911/E911 access, provision of requested unbundled elements and access to database. The parties will also develop mutually agreeable incentives for maintaining compliance with the quality measurements. If the parties cannot reach agreement on the requirements of this section, either party may seek mediation or relief from the Commission.*

BellSouth agrees that it is reasonable to develop and implement objective standards and measurements by which to measure BellSouth's performance of its obligations under the Act and is committed to developing such standards and measurements. Such standards and measurements should be uniform, however, and jointly developed, not just with AT&T, but with other CLECs. In no event should such standards be based on artificial "bogies" set by AT&T. In the unlikely event

that AT&T experiences service problems during the next six months in which BellSouth proposes to jointly develop such standards with the industry, there are existing complaint procedures in place today to remedy any such problems.

ANALYSIS AND FINDINGS:

Under §251(c)(1) of the Act, BellSouth was under an affirmative obligation to negotiate in good faith the particular terms and conditions of agreements to fulfill the following duties: resale; number portability; dialing parity; access to rights-of-ways; reciprocal compensation for call transport and termination; interconnection; unbundled access; resale notice of changes; and collocation. *See* 47 U S C §251(b)(1-5) and (c)(2-6). This listing is exclusive, and an ILEC is only obligated to negotiate as to those issues. The Act goes on to provide, at §252(b), that any party may petition a State Commission to arbitrate any "open issues." Restated, the only issues that are properly the subject of arbitration are those that are specifically enumerated as being the subject of mandatory good faith negotiations at §251(b)(1-5) and (c)(2-6). Even a casual review of the Act will readily disclose that the requested contractual language mandating DMOQs is not among those issues specifically enumerated for negotiation and arbitration in the Act, and this issue is therefore inappropriate for arbitration.

Furthermore, this Commission has already adopted comprehensive service quality standards in its General Order dated March 15, 1996, entitled "Regulations for Competition in the Local Exchange Market." Neither party has shown these standards to be insufficient or the need for additional standards. No additional regulations relative to service quality appear to be necessary at present.

ISSUE 4: Responsibility For Unbillable or Uncollectible Competitor Revenues

AT&T's Position: *AT&T requires performance measurement standards such as DMOQs to ensure meaningful control over billing quality. When AT&T purchases services for resale, BellSouth has sole responsibility for the personnel provisioning the services and the equipment providing the services. Thus, AT&T contends that BellSouth should be responsible for any work errors that result in unbillable or uncollectible AT&T revenues, and should compensate AT&T for any losses caused by BellSouth's errors.*

BellSouth's Position: *BellSouth agrees to including reasonable provisions regarding its liabilities for billing errors in its interconnection agreement with AT&T. There is ample precedent for such provisions in current agreements between BellSouth and AT&T as a customer of BellSouth's switched access services, and those agreements should serve as a model here. To the extent AT&T seeks to force into the interconnection agreement pre-set financial penalties and other liquidated damages, BellSouth submits that such issues are not subject to arbitration under Section 251 of the Act and that any liquidated damage or financial penalty amount AT&T proposes is arbitrary, has no relevance to whether actual damages have occurred, and is in the nature of a penalty or fine. Such clauses are not included in the contractual provision of access services for other telecommunications providers and, in BellSouth's fifteen (15) years of experience in the access arena, such a provision has never been warranted. There is no reason at this time to mandate such provisions.*

ANALYSIS AND FINDINGS:

As was noted in discussion of the previous Issue, BellSouth was under an affirmative obligation to negotiate in good faith the particular terms and conditions of agreements to fulfill *only*

those duties which were specifically enumerated in §251(b)(1-5) and (c)(2-6) of the Act This Commission's authority is likewise limited to resolution of issues appearing on that exclusive listing Even a casual review of the Act will readily disclose that the requested contractual language governing liability for unbillable or uncollectible revenues is not among those issues specifically enumerated for negotiation and arbitration in the Act. This issue is therefore inappropriate for arbitration, and should properly be addressed on a case-by-case basis in an appropriate judicial forum.

ISSUE 5: Real-Time and Interactive Access Via Electronic Interfaces

AT&T's Position: *BellSouth should provide AT&T, by a date certain, with electronic real-time interactive operational interfaces for unbundled network elements so that AT&T will be able to serve Louisiana customers using both the total service resale and the unbundled network element avenues to enter the market. Specifically, AT&T contends that BellSouth should provide the interface for all five of the following different functions: pre-ordering, ordering, provisioning, maintenance and repair, and billing.*

AT&T contends that the Act requires BellSouth to provide AT&T with services equal to those which BellSouth provides to itself and its affiliates. 47 U.S.C.A. § 251(c)(2)-(4). Likewise, the FCC Order requires BellSouth to provide nondiscriminatory access to operational support systems, and any relevant internal gateway access, in the same time and manner in which BellSouth provides such functions to itself. 47 C.F.R. § 51.313(c); FCC Order No. 96-325 ¶¶ 517-528. This Commission has also ordered direct on-line access to an ILEC's mechanized order entry system; numbering administrations systems and numbering resources; customer usage data; and local listing databases and updates. LPSC reg. § 1101(G). This access is to be equal to that provided to the incumbent local exchange company's ("ILEC") own personnel. Id.; see also LPSC Reg. § 1001(F).

Consequently, AT&T argues that BellSouth's refusal to provide electronic interfaces is in direct contravention of the Act, the FCC Order and the Commission's regulations.

AT&T and BellSouth agree that procedures must be established to protect the privacy of customer service records. AT&T and BellSouth also agree that new entrants should have convenient access to customer service records when authorized by the customer. The parties, however, disagree on what is the best method to protect consumer privacy and allow for convenient authorized access to customer service records. BellSouth proposes to restrict access to customer service records on the front end of the process whereas AT&T proposes to police access on the back end of the process. AT&T believes that its method provides the best balance between protecting privacy and providing convenience.

BellSouth wants to deny new entrants electronic access to customer service records. BellSouth is willing to provide the information contained in customer service records verbally or by facsimile, but only upon BellSouth's receipt of verbal or written consent by the customer. In comparison, AT&T proposes that BellSouth provide electronic access to customer service records. AT&T also proposes that the parties develop electronic audit procedures that would monitor a local exchange carrier's access to customer service records. If an audit establishes that a local exchange carrier has accessed a customer service record without customer authorization, the local exchange carrier would be subject to appropriate penalties.

With respect to customer privacy, neither BellSouth's nor AT&T's proposal will prevent all unauthorized access to customer service records. Under either proposal, an unethical local exchange carrier can provide phony verbal or written consent to gain access to customer service records. What AT&T's proposal can provide is a strong deterrent to unauthorized access through

tight audit procedures and appropriate penalties. BellSouth's proposal does not appear to contain any procedures that ascertain whether the customer authorization BellSouth receives is authentic.

With respect to convenient authorized access, AT&T's electronic access is far and away the most efficient and effective method to obtain information contained in customer service records. AT&T's proposal would allow a new entrant to access the customer service records directly through an electronic interface and transfer that information into the new entrant's database. BellSouth's proposal, however, would require the intervention by BellSouth personnel to transmit customer service information manually to the new entrant. That process would be more costly and slower than AT&T's proposed electronic process.

During the arbitration hearing, BellSouth witness Calhoun attempted to confuse the issue of access to customer service records by raising the issue of "slamming." These two issues, however, are unrelated. Slamming occurs when a telecommunications carrier submits an order to change a customer's service provider without the customer's consent. Access to customer service records, on the other hand, involves obtaining pre-ordering information. A customer can be slammed whether or not a new entrant has access to that customer's service record. BellSouth's attempt to tie slamming with access to customer service records is a red herring. Additionally, AT&T does not request access to sensitive credit information as suggested by BellSouth. Rather, AT&T requires access only to the features, functions and prices currently received and paid by a BellSouth customer requesting new service from AT&T. If AT&T does not have real time access to this information, AT&T will not be able to answer appropriately questions posed by these new customer.

In sum, AT&T's proposal strikes the best balance between the customer's desire for privacy and convenient access to information contained in that customer's service record.

BellSouth Position: *Pursuant to the Act and the June 11, 1996 Order issued by the Georgia Public Service Commission in Docket No. 6352-U, BellSouth and AT&T have worked together to develop appropriate electronic interfaces for pre-ordering, ordering and provisioning, trouble reporting, and billing usage data functions; and these interfaces meet AT&T's interim needs. BellSouth is continuing to work with the industry to develop long term electronic interfaces. BellSouth will agree to provide AT&T its requested "machine to machine" or "application to application" interface for pre-ordering by December 31, 1997 if AT&T provides BellSouth the technical specifications for this design by January 15, 1996 and if AT&T pays the reasonable cost for developing these interfaces.*

AT&T has also requested electronic on-line access to customer service record information during the pre-ordering phase while it is making its initial contact with its new customer. The requested information includes the services and features to which the customer subscribes. BellSouth agrees that AT&T should have this information when it has secured the appropriate consent from the customer, but denies that AT&T must have on-line electronic access to the customer service records in BellSouth's data base while it is talking to its new customer, and further disagrees that this type of access is essential in order to verify the services the customer wants or needs.

BellSouth's position is that, despite diligent effort, it cannot at this time technically devise a way to provide AT&T on-line electronic access to newly-converted AT&T customer service records, without also giving AT&T access to all other customer service records in its data base, including the records of BellSouth customers and other CLEC customers. BellSouth has investigated several ways to restrict a CLEC's access to the customer service record database, but has not discovered a reliable method to date. Permitting unrestricted and unprotected access to

this database would directly conflict with the Commission's Consumer Protection Rues which state that "[n]o TSP may release non-public customer information regarding a customer's account and calling record." See Louisiana Public Service Commission Regulations for the Local Telecommunications Market, Section 1201.B.11, dated March 15, 1996. AT&T witness Ron Shurter agreed that this provision would foreclose the requested relief, absent modification of the existing rules. BellSouth submits that modification of the Commission's Regulations for the Local Telecommunications Market is beyond the scope of this proceeding.

There are multiple other sources from which AT&T can derive this kind of information, including marketing directly to the customer itself who certainly knows what services he or she wants and or uses. BellSouth has offered to provide the requested information in several ways that will not involve unlimited and automatic access to customer service records of all customers. First and foremost, the best source of the information AT&T wants is the customer itself and AT&T certainly has access to the customer. Furthermore, the customer has monthly bills which identify each service and feature to which he subscribes. Second, BellSouth has offered to accept three-way calls with AT&T and the customer both on the line; in those circumstances, and with the customer's permission, the BellSouth service representative will disclose that customer's list of services and features. Additionally, BellSouth is willing to fax a printed copy of the customer's service record to AT&T with the customer's permission. Finally, BellSouth has implemented a "switch as-is" process in which the Company will switch all services and features subscribed to by a particular customer over to AT&T, after AT&T has given BellSouth the customer's name and telephone number and demonstrated that the customer desires to switch every service and feature over to AT&T. The "switch as is" process will be an electronic process in which BellSouth could switch all of a

customer's currently subscribed services and features to AT&T on a "same day" basis (depending on when the order is received) without any physical change to the service at all. AT&T has no specific problems with the "switch as is" process – it just wants more.

In summary, BellSouth requests the Commission to order (1) that the electronic interfaces and implementation scheduled identified in Gloria Calhoun's direct testimony are appropriate for both the provisioning of resold services and unbundled network elements; (2) that BellSouth shall cooperate with AT&T through the appropriate industry fora to develop further long term interfaces; (3) that BellSouth shall accept AT&T's request for a specific design for the pre-ordering interface as a bona fide request and provide such interface by December 31, 1997, provided that AT&T provides to BellSouth by January 15, 1997 reasonable specifications for the design and that AT&T shall pay the reasonable cost associated with implementing such an interface; and (4) that AT&T's request for electronic on line access to customer service records is denied, and BellSouth is directed to provide appropriate customer service information by other agreed upon means after AT&T has received the consent of the customer.

ANALYSIS AND FINDINGS:

This issue involves two sub-issues, namely the nature of the electronic interfaces and the level of access to be provided to BellSouth's customer records.

The record in this matter discloses that the requested electronic interfaces do not currently exist. AT&T has requested that BellSouth be ordered, by a date certain, to provide it with such interfaces. BellSouth must provide the requested electronic interfaces within 12 months of AT&T's providing specifications for the interfaces it desires to be provided with. All costs prudently incurred by BellSouth in developing these electronic interfaces shall be borne by AT&T. If any future CLEC

utilizes the electronic interfaces developed by BellSouth for AT&T, they shall reimburse AT&T for its cost incurred relative to the development of such electronic interfaces on a pro-rata basis determined on actual usage.

However, even after these interfaces are in place, AT&T is not entitled to direct access to BellSouth's customer records, pursuant to this Commission's General Order dated March 15, 1996, entitled *Louisiana Public Service Commission Regulations for the Local Telecommunications Market*, §1201(B)(11). However, in the event BellSouth customers request and/or consent to the disclosure. BellSouth shall disclose the customers current services and features to AT&T. Customer consent to such disclosure may be evidenced in a three-way call or other reliable means. BellSouth and AT&T are to develop a methodology for BellSouth to provide customer service records in accordance with §§ 901(L)(1), 1001(D) and (F) and 1101(F), (G) and (H) of the aforementioned General Order dated March 15, 1996. Also, BellSouth shall implement an electronic "switch as is" process by which it shall switch all services and features subscribed to by a particular customer over to AT&T upon receipt of appropriate customer authorization[3].

ISSUE 6: Direct Routing to Operator and Director Assistance Services

AT&T's Position: *Customized routing is the capability for all customers to dial the same Operator and Directory Assistance number, but have their calls routed to the operators of their chosen local service provider. Also known as "selective routing" and "direct routing," this is the switch's ability to distinguish between customers for various purposes. For example, an AT&T customer dialing "411" should be connected with an AT&T operator and not a BellSouth operator.*

[3] See Consumer Protection provision's of this Commission's General Order dated March 15, 1996, §1201(B)(2)

Direct routing is necessary to provide Louisiana consumers with convenient access to their chosen local service provider and to enhance competition in the local exchange market and to avoid customer confusion.

The Act generally, and the FCC Order specifically, require customized routing of Operator and Directory Assistance services directly to AT&T's service platform, absent a showing by BellSouth that it is not technically feasible. 47 U.S.C.A. § 252(c)(2); FCC Order No. 96-325 ¶ 418. It is technically feasible for BellSouth to implement customized routing. BellSouth admits its switches are capable of performing this function, but argues they lack the capacity to do so. The mere fact that BellSouth may need to make some modifications to its network does not establish technical infeasibility. FCC Order No. 96-325 ¶ 202.

Customized routing may be accomplished on an interim basis with Line Class Codes ("LCCs"), which are software indicators that provide information to route a particular customer's calls. For example, one LCC might be associated with all customers having basic dial-tone service plus call waiting, while another might be associated with all customers having basic dial-tone service plus call forwarding.

AT&T believes BellSouth's switches have adequate capacity to perform customized routing. BellSouth's DMS-100 switches will be upgraded to 2,048 LCCs in 1996, and 4,096 LCCs in early 1997. Its Lucent Technologies switches will be upgraded from 1,024 LCCs to 6,000. These upgrades will solve any supposed capacity problem, but other actions reveal that LCCs may readily address AT&T's need for customized routing. Studies verify that many unused LCCs exist in BellSouth's network. Moreover, AT&T has proposed an interim solution that would allow for conservation of LCCs. In fact, BellSouth agrees that, if a competitor did not want 350 LCCs, then

the capacity issue would be diminished, if not eliminated. Additionally, some number of LCCs reflect services no longer offered by BellSouth, meaning its competitors clearly need less than 350 LCCs.

Lastly, AT&T has proposed a long term solution that would eliminate the need to use LCCs for customized routing.

BellSouth's Position: *BellSouth will resell its retail services and offer all capabilities (operator and directory services, dedicated transport and common transport) on an unbundled basis; however, when a CLEC resells BellSouth's services or otherwise utilizes BellSouth's local switching it is not technically feasible to selectively route calls to CLEC operator service or repair service platforms on a non-discriminatory basis to all CLECs who may desire this feature. Using the line class code card alternative discussed in BellSouth witness Keith Milner's testimony, BellSouth could potentially selectively route calls for no more than five CLECs; thereafter, its capacity to provide selective routing would be exhausted. BellSouth is willing to continue to cooperate with AT&T and other CLECs in an industry forum to develop an AIN-based solution to this problem on a long term basis.*

BellSouth requests that this Commission deny AT&T's request for selective routing at this point in time and direct the parties to continue to work jointly with other interested carriers to develop an AIN based long term solution to this issue, and to report back to this Commission on their progress in six months. Alternatively, and on an interim basis until such a solution is developed, BellSouth proposes to use line class codes to allow resellers such as AT&T to reach BellSouth's operator service and repair service platforms on an unbranded basis. BellSouth submits that this is a good interim approach until such time as an acceptable industry standard approach,

whether it be using AIN or some other technical device, can be used to provide services more in line with what AT&T is requesting.

ANALYSIS AND FINDINGS:

Selective routing as requested by AT&T does not appear, at present, to be technically feasible. In order to route the same dialed digits to multiple destinations, the switch must be able to determine the desired routing. AT&T has proposed the use of Line Class Codes ("LCCs") as a technically feasible method for selective routing. Line Class Codes store the data that determines the class of service, screening treatment, recording type and rate center identification for one or more lines that will receive identical treatment. Consequently, each class of service would require a unique LCC to be assigned to it. Unfortunately, there are only a finite number of line class codes available (five in most switch configurations.) This was acknowledged by AT&T. Once this finite number is reached, no further CLECs can be accommodated. This was also acknowledged by AT&T. Simply put, the use of LCC's to effect selective routing would have a direct *anti*-competitive effect on any subsequent market entrants, and would appear to therefore be wholly at odds with the clear intent of the federal Act. Fortunately, however, the record is replete with references to impending resolution of the technical problems with AIN selective routing[4].

BellSouth shall, within six (6) months of entry of this Order, show cause why it should not be ordered to provide selective routing. If, at that time, BellSouth is not providing AIN selective routing, it shall bear the burden of so proving that such remain technically infeasible, and shall be

[4]According to testimony presented at hearing, AIN selective routing may become technically feasible within 3 - 4 months. AT&T's post-trial brief adopts with approval the testimony of a BellSouth witness on this point, stating "BellSouth recognizes that a long term solution to customized routing likely will come about soon. Mr. Milner admitted that an AIN-based function could provide the solution within a matter of months." *Id.*, at 49.

required to establish for the record that it has taken all reasonable steps to resolve the technological limitations on AIN or other means selective routing.

ISSUE 7: Branding of Services Sold or Information Provided to Customers

AT&T's Position: *AT&T believes branding is a prerequisite for achieving parity and thereby making competition possible so Louisiana consumers can reap the benefits of effective competition. 47 C.F.R. § 51.305(a), 311(b); FCC Order No. 96-325 ¶¶ 244, 313, 970. BellSouth agrees that its service personnel will advise AT&T customers they are acting on AT&T's behalf, and will refrain from marketing BellSouth directly or indirectly to AT&T customers. BellSouth has agreed to require BellSouth personnel to use AT&T designed "leave behind" cards when making a service call on behalf of AT&T. However, AT&T requests that AT&T's "leave behind" cards be of the same quality has that which BellSouth provides itself. AT&T agrees to incur the expense of creating such cards.*

AT&T also contends BellSouth should brand its Operator and Directory Assistance services with the AT&T brand whenever AT&T chooses to have those calls routed to a BellSouth service platform. The Act expressly precludes BellSouth from imposing discriminatory conditions -- such as a refusal to brand resold services --on resale. 47 U.S.C.A. § 251(c)(4)(B). Additionally, the FCC Order requires BellSouth to brand Operator Services/Directory Assistance services for resale unless it is not technically feasible. 47 C.F.R. § 51.613(c); FCC Order No. 96-325 ¶ 971.

BellSouth's Position: *The previous issue involved the "selective routing" question in the context where AT&T resells BellSouth's services using AT&T operators and not BellSouth operators. Issue No. 7 involves the selective routing question in the context where AT&T wants to resell BellSouth's services using BellSouth's operators. In this latter scenario, AT&T has requested that*

BellSouth's operators brand the calls with AT&T's brand. The same technical problems exist with respect to this issue as exist with Issue No. 6, and BellSouth's position on this issue is the same.

AT&T has also requested that when BellSouth personnel communicate with AT&T customers on behalf of AT&T, BellSouth should 1) advise customers they are representing AT&T; 2) provide customer information materials supplied by AT&T; and, 3) refrain from marketing BellSouth directly or indirectly to customers. The parties have resolved this issue with respect to the second and third parts, that is, the leave-behind cards and the statements made by BellSouth representatives when servicing AT&T's customers. The remaining issue involves whether BellSouth personnel must "brand" calls from AT&T's customers. This is the selective routing issue discussed in Issues No. 6.

ANALYSIS AND FINDINGS:

"Branding" is a technically available option only in conjunction with selective routing. At such time as selective routing becomes available (see discussion at Issue 6, supra), BellSouth shall "brand" its services as requested by AT&T. However, until such time, "branding" remains technically infeasible.

ISSUE 8: *This issue was resolved by the parties prior to arbitration*

ISSUE 9: Name/Logo Appearance on Cover of White and Yellow Page Directories

AT&T's Position: *In order to inform Louisiana consumers about the choice they have in local service carriers, AT&T believes BellSouth should have to display the AT&T logo on BellSouth's telephone directories on terms and conditions at parity with those which BellSouth provides itself. This issue is subject to arbitration because BellSouth Advertising and Publishing Company ("BAPCO") is a wholly-owned subsidiary of BellSouth and BellSouth can instruct BAPCO to follow the direction of this Commission. Indeed, BellSouth has used BAPCO in the past to fulfill*

its legal and regulatory obligations. The Louisiana Regulations require that BellSouth (or its affiliates), provide white page directory listings. BellSouth will no doubt look to BAPCO to fulfill BellSouth's legal obligation. Moreover, it is clear that the legal distinction between BAPCO and BellSouth is often blurred. BAPCO admitted during this arbitration proceeding that the telephone number customers must call to obtain new service offerings, billing information, and repair services is the same number customers must call to order new directories. Consequently, it is clear, that BellSouth and BAPCO share resources, assets and/or employees, despite BAPCO's claim to the contrary. BellSouth and BAPCO should not be able to gain a competitive marketing advantage by refusing to allow AT&T equal coverage on the telephone directory if AT&T pays a reasonable price for these services.

BellSouth's Position: *This is a dispute between AT&T and BellSouth Advertising and Publishing Company ("BAPCO") and not between AT&T and BellSouth. AT&T's request does not constitute an obligation imposed upon BellSouth under § 251 or § 252 and is therefore not subject to this arbitration. The resolution of this issue should be negotiated between BAPCO and AT&T.*

BAPCO's Position: *BellSouth Advertising and Publishing Corp. ("BAPCO"), the publisher of the directories at issue, intervened in these proceedings and filed an Exception alleging the lack of subject matter and personal jurisdiction in these proceedings. BAPCO is an affiliate, but not a subsidiary, of BellSouth in the business of publishing directories, including white pages directories and Yellow Pages directories. It is BAPCO and not BellSouth that publishes directories. The issue of whether AT&T's name and logo should appear on directory covers is not subject to resolution in the present arbitration because it does not fall within the scope of compulsory arbitration*

provided by Section 252 of the Federal Telecommunications Act; and as BAPCO is neither a telecommunications carrier nor a local exchange carrier within the meaning of Section 251 and 251 of the Federal Act.

ANALYSIS AND FINDINGS:

The record compiled in this matter establishes that BAPCO and BellSouth are affiliates, both being subsidiaries of their parent holding company, BellSouth Corporation. BAPCO is the sole party responsible for publication of directories, which it then provides to BellSouth for distribution. BAPCO is engaged in no other business than the publication of directories. BellSouth exercises no control over the operations of BAPCO.

As was noted in discussion of Issue 3, BellSouth was under an affirmative obligation to negotiate in good faith the particular terms and conditions of agreements to fulfill *only* those duties of providing interconnection, resale of services or unbundling of network elements, as is specifically enumerated in §251(b)(1-5) and (c)(2-6) of the Act. Likewise, this Commission's jurisdiction in these arbitration proceedings is limited to resolution of issues appearing on that exclusive listing At no point in §251 of the Act, or anywhere in the Act for that matter, does the issue of directory covers appear Such an issue does not even bear a casual relationship to any of the exclusive issues for negotiation (and therefore arbitration) appearing in the Act.

Furthermore, AT&T instituted the underlying arbitration proceedings with BellSouth *Telecommunications, Inc.*, while the directories are published exclusively by BellSouth *Advertising and Publishing Corp.* Although affiliates, each of these parties have separate and distinct corporate identities that must be recognized Simply put, ordering BellSouth (Telecommunications, Inc.) to place AT&T's logo on directory covers would be meaningless, because BellSouth doesn't publish

directories, BAPCO does. Even had AT&T named BAPCO as a party to these proceedings its request would have to be denied, as BAPCO is not subject to this Commission's jurisdiction in conducting the present arbitration. Under the Act, the duty to negotiate is only imposed on incumbent local exchange carriers. See 47 U.S.C. §251(c)(1). This Commission's jurisdiction in the instant proceeding is limited to arbitration of any "open issues" from negotiations between an ILEC and CLEC. See 47 U.S.C. §252(b)(1). In short, BAPCO was not subject to compulsory negotiation under the federal Act, as it is not an ILEC and as the directory cover issue is not among the exclusive enumeration of issues subject to mandatory negotiation and it accordingly cannot be subjected to compulsory arbitration.

As the issue of directory cover logo placement is not properly the subject of arbitration under the federal Act; as BellSouth has no ability to control or direct the placement of names or logos on directory covers, and as BAPCO, the sole party responsible for publication of the directories in question, is not jurisdictionally subject to arbitration under the Act, AT&T's request for an order directing the placement of its name and logo on the directory cover is rejected.

ISSUE 10: *This issue was resolved by the parties prior to arbitration*

ISSUE 11: Advance Notice to Wholesale Customer of Service and Network Changes

AT&T's Position: *In order to compete equally with BellSouth, AT&T must receive notice of changes to services ad network capabilities being relied upon for service to customers from BellSouth before BellSouth implements those changes. This is needed to ensure BellSouth is not given a tactical advantage over the new entrant. Without such notice, BellSouth could undermine the viability of AT&T services by repricing or changing the underlying service before AT&T could adjust its offers.*

BellSouth's Position: *BellSouth will provide notice on new services and changes to existing services when the tariffs are filed at the Commission. Earlier advance notice than the tariff filing could lead to liability or further notice responsibilities as changes are made prior to actual filing date. AT&T and BellSouth have agreed to terms for notification of technology or operational changes that impact AT&T's use of services purchased by AT&T from BellSouth. BellSouth would provide scheduled notices to all carriers concerning network changes that can impact interconnection or network unbundling arrangements. Further, regularly scheduled joint engineering meetings between BellSouth and local providers will provide notice on other technical changes. They only outstanding issue is that AT&T wants BellSouth to provide notice 45 days in advance of the introduction of new services. In this rapidly fluctuating competitive environment, it would be impractical to provide advance notice to the extent AT&T has requested. Additionally, such notice in advance might subject BellSouth to complaints or other obligations should plans for new service introductions not occur as originally noticed.*

BellSouth has proposed an alternative that would allow for a longer notice period. Basically the alternative plan limits BellSouth's liability in the event changes occur after notice is provided and also limits the CLEC's use of this information to operational and billing changes. This alternative has been deemed as acceptable by at least one other potential reseller and should be a reasonable resolution for this issue with AT&T.

ANALYSIS AND FINDINGS:

BellSouth shall advise AT&T at least 45 days in advance of any changes in the terms and conditions under which it offers Telecommunications Services to subscribers who are non-telecommunications carriers including, but not limited to, the introduction or discontinuance of any

feature, function, service or promotion. To the extent that revision occur between the time BellSouth notifies AT&T of the change, BellSouth shall immediately notify AT&T of such revisions consistent with its internal notification process. AT&T will not be allowed to hold BellSouth responsible for any cost incurred by AT&T as a result of such revisions, unless such costs are incurred as a result of BellSouth's intentional misconduct. AT&T is also precluded from utilizing the notice given by BellSouth to market its resold offering of such services in advance of BellSouth.

ISSUE 12: *This issue was resolved by the parties prior to arbitration*

ISSUE 13: *This issue was resolved by the parties prior to arbitration*

ISSUE 14: Access to Unbundled Network Elements

AT&T initially requested BellSouth to unbundle twelve of its network elements. The parties' ongoing negotiations have reduced the number of open issues. Following stipulation entered at by the parties at the beginning of the arbitration hearing, there are only three remaining issues of contention, namely 1) the manner in which AT&T should be given access to the Network Interface Device ("NID"), 2) whether BellSouth can limit AT&T to 'mediated' access to the AIN functionality contained in the unbundled signaling transfer points and service control points and data bases, and 3) whether vertical services are included in the definition of "unbundled Local Switching " Each of these "sub-issues" will be addressed separately

14(A): Network Interface Device ("NID")

AT&T's Position: *BellSouth refuses to allow AT&T to attach its loop wire to a BellSouth NID in those cases where the NID does not have excess capacity. BellSouth claims that such access would create an electrical hazard because this connection would leave its loop without proper grounding. BellSouth's position is baseless and should be rejected for two reasons. First, AT&T*

has set forth the reasonable and safe manner in which it is prepared to connect its wire to the existing NID and has acknowledged the need for safety precautions. Properly trained technicians would ensure that all changes to the NID were consistent with the National Electrical Code. Further, BellSouth's proposal itself poses a danger due to the exposed wires connecting the existing NID to the newly installed NID.

Second, BellSouth's position would negatively impact Louisiana consumers whose NIDs lack excess capacity. Under BellSouth's proposal, these consumers would be forced to have an additional NID attached to the outside of there homes if they chose to take advantage of competition and change local service providers. This inconvenience is unnecessary and would be a disincentive to the development of competition.

BellSouth's Position: *The NID is a single-line termination device or that portion of a multiple-line termination device required to terminate a single line or circuit. The fundamental function of the NID is to establish the official network demarcation point between a company and its end-user customer. The NID, however, also provides a protective ground connection. The FCC concluded in its August 8th Order that it is technically feasible to unbundle the NID; however, the FCC does not require that the CLEC be allowed to terminate its loop directly to BellSouth's NID. BellSouth believes that the NID-to-NID connection described in the FCC's Order is an appropriate arrangement for a CLEC to connect its loop to the inside wire, providing, of course, that the CLEC, in connecting to the inside wire, does not disrupt or disable the BellSouth loop and NID. Alternatively, BellSouth has modified its original position to allow AT&T to connect its loop to any unused terminals in the BellSouth NID.*